(A) Revisions to the TNRCC Regulation IV (31 TAC § 114.21, Employer Trip Reduction Program), as adopted by the TACB on October 16, 1992.

(B) TACB Order 92–14 as adopted on October 16, 1992.

(C) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992, pages 31–38, addressing: 8.c. Quality Assurance Measures; 9. Training and Information Assistance; 11. Enforcement; and 12. Notification of Employers.

(ii) Additional material.

(A) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992.

(B) The TACB certification letter dated November 10, 1992, signed by William R. Campbell, Executive Director, TACB.

[FR Doc. 95–5439 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI26–04–6805; FRL–5157–1]

Approval and Promulgation of Implementation Plan; Michigan Detroit-Ann Arbor NO_X Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is granting an exemption to the Detroit-Ann Arbor ozone nonattainment area from applicable oxides of nitrogen (NO_X) requirements found in the Clean Air Act (Act). Approval of the exemption would apply for various NO_X requirements including adoption and implementation of regulations addressing general conformity, transportation conformity, inspection and maintenance, reasonably available control technology, and new source review. The State of Michigan submitted a NO_X exemption request on November 12, 1993. A subsequent letter dated May 31, 1994 clarified this earlier submittal. This request is based on the fact that ozone monitoring in the Detroit-Ann Arbor area indicates that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for an exemption from the NO_X requirements based on a demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard.

EFFECTIVE DATE: This final rule will be effective April 6, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993 the State of Michigan submitted a petition to the EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On August 10, 1994, EPA published a direct final rulemaking approving the NO_X exemption petition for the Detroit-Ann Arbor nonattainment area. During the 15 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and 2 requests for additional time to comment on this rulemaking from the State of New York and the Citizens Commission for Clean Air in the Lake Michigan Basin. The EPA published a document announcing the opening of a second comment period on October 6, 1994. The second comment period lasted until November 7, 1994. During the second comment period, the State of New York submitted adverse comments.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated February 8, 1994 and December 1, 1994.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994 signed by Sharon Buccino. After each comment is EPA's response.

NRDC Comment 1: Certain commenters argued that NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

EPA Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which

section 302(e) of the Act defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the Act sanctions, areas seeking a NO_X exemption would have had to submit their exemption requests for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2: Some commenters stated that the modeling required by EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response: This comment is directed towards exemption approvals based on photochemical grid modeling. This comment does not apply in the case of Detroit-Ann Arbor because this exemption request is based on monitoring.

NRDC Comment 3: Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

EPA Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the Act. The section 107 criteria are more comprehensive than the Act requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NRDC Comment 4: A waiver of NO_X controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response: As a result of the comments, EPA reevaluated its position on this issue and is revising the previously issued guidance. As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of

[1] Section 302(e) of the Act defines the term ''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' [3] As described in section 4.3 of the Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under section 182(f), December 16, 1993 (''guidance'') document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State (see section 110(a)(2)(D)(i)(I)).''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NRDC Comment 5: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response: With respect to conformity, EPA's conformity rules [4,5] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity

[3] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

[4] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[5] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rules,'' November 30, 1993 (58 FR 63214).

regulations, and the Agency remains bound by their existing terms.

NRDC Comment 6: The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may by limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

State of New York Comment 1: The State of New York reaffirms its objection to this proposed rulemaking originally stated in an August 24, 1994 letter. According to the May 27, 1994 memorandum from Mr. John Seitz and the December 1993 section 182(f) NO_X exemption guidance, the exemption cannot be approved if there is evidence that NO_X exemption would interfere with the attainment of a downwind area.

Section 3.3 of the December 1993 guidance states;

> The net air quality benefit test is not specifically limited to an ozone nonattainment area or ozone transport region and may be directed at a specific set of sources. Thus, a broad geographic area should be considered. The area may, in some cases, extend beyond an ozone nonattainment area or ozone transport region * * * Sufficient area is needed to allow for completion of the various chemical transformations of NO_X and interaction with other pollutants.

The latest results of the EPA regional oxidant modeling (ROM) indicate that emissions of NO_X from stationary sources west of the Ozone Transport Region contribute to increased ozone levels in the northeast, including New York State. These results show that control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the ozone transport region (OTR).

EPA Response: With respect to the comments regarding the latest ROM results and downwind impacts in general, EPA refers the commenter to its previous responses to NRDC Comments 3 and 4.

The State of New York incorrectly cites section 3.3 of EPA's December 1993 guidance. Section 3.3 applies only to those areas applying for a NO_X exemption under the ''net air quality benefit'' test. The Detroit-Ann Arbor petition is based on the ''contribute to attainment'' test. The ''contribute to attainment'' test requires that only the emissions from the immediate nonattainment area be considered in evaluating the petition (see December 1993 guidance document, ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)'', section 4.3). In its petition the State of Michigan has demonstrated that the average number of exceedances of the ozone standard in the area during the past 3 years (1991–1993, the most current monitored years at the time the exemption request was made) is fewer than one per year which is sufficient to receive an exemption under this test. In addition, the 1994 ozone season has passed and no violation of the ozone standard has been recorded in the area.

State of New York Comment 2: The air quality monitoring data alone does not support this exemption proposal. This is supported by a July 28, 1994 letter from the Michigan Department of Natural Resources which states that ''(we) are nearly in violation of the ozone standard at several monitoring sites, primarily due to the many excursions we had in June.'' This proposal does not appear to consider this data. In addition, the data submitted for the period 1991 to 1993 (November 12, 1993 section 182(f) NO_X exemption request letter to EPA Region V) contain the maximum number of exceedances allowed to still be considered attainment. This does not provide a clear test that additional

reductions would not contribute to maintenance of attainment.

EPA Response: EPA is required to base its SIP decisions on the information duly submitted by a State in fulfillment of requirements imposed by the Act. The basis for granting this exemption is the fact that the information submitted by the State of Michigan demonstrates that this area has not experienced a violation of the ozone standard for the most recent 3 years of monitored data. Consistent with the established EPA policy, the fact that the area has recorded the maximum number of exceedances without violating the standard is irrelevant to a determination regarding whether an area is showing attainment for the period in question. What is relevant is whether or not the standard was violated, and the submitted data confirms that it was not. (See 40 CFR 50.9, 40 CFR part 50, appendix H, and Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003.) In addition to the fact that the ozone standard was not violated for the years 1991–1993, the years upon which this exemption request is based, monitoring data throughout the 1994 ozone season for the Detroit-Ann Arbor area continues to show attainment of the ozone standard.

State of New York Comment 3: The State of New York strongly objects to the guidance developed to allow these exemptions to be processed. The May 27, 1994 memorandum ''Section 182(f) Nitrogen Oxides (NO_X Exemptions—Revised Process and Criteria'' allows a nonattainment area to consider only its own air quality monitoring data and does not require a demonstration that the area does not negatively impact the attainment status of downwind areas. The guidance memorandum also allows the nonattainment area to submit the NO_X exemption request without a redesignation or maintenance request. This does not provide the federal government with the appropriate information to make an informed judgment on the contribution of NO_X to nonattainment. Finally, this guidance did not undergo State review before issuance. While not necessarily required, it is EPA's usual practice to allow the States to have input in the development of guidance.

EPA Response: EPA's guidance regarding both the adequacy of the demonstration needed to qualify for a NO_X exemption and the extent to which downwind impacts need to be considered was developed in accordance with what EPA considers to be the best interpretation of the language in section 182(f) of the Act. For a more detailed discussion of that interpretation see EPA's responses to NRDC Comments 1 and 4 above. In addition, while it may be true that this guidance did not undergo State review before issuance, an opportunity for State participation is provided when such guidance is followed in proposed rulemaking actions. If a State objects to a proposed action and the guidance that action is based on, it is free to comment on the proposed action during the public comment period provided, as indeed, the State of New York has done here.

State of New York Comment 4: The Detroit-Ann Arbor area has been designated as moderate ozone nonattainment and as such requires a 15 percent rate-of-progress plan and a modeled attainment demonstration. It is unclear from the record whether these requirements have been fulfilled. An exemption request would need this information at a minimum to determine its validity. Please provide the status of these State implementation plan revisions.

EPA Response: As described previously in EPA's response to NRDC Comment 1, EPA action on NO_X exemption petitions submitted pursuant to section 182(f)(3) of the Act can be taken independently of action on attainment or maintenance demonstration plans or redesignation requests. Consequently, the issue of whether the State of Michigan's independent requirements under the Act to submit a 15 percent rate-of-progress plan and an attainment demonstration plan have been met do not affect EPA's ability to act on the State's exemption request. (See also EPA's response to NRDC Comment 3, describing the Agency's policy regarding the use of monitoring data to meet the ''contribute to attainment'' test).

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_X exemption request. Therefore, EPA is granting the Detroit-Ann Arbor section 182(f) exemption petition based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

The EPA's transportation conformity rule[6] and EPA's general conformity rule[7] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements, and the conformity requirements apply on an areawide basis. Since this petition for exemption is areawide, as opposed to source-specific, an approval would also exempt this area from the NO_X conformity requirements of the Act (see John Seitz May 27, 1994 ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'' memorandum). Additionally, the Inspection/Maintenance (I/M) Program Final Rule (57 FR 52950) allows for the omission of the basic I/M NO_X requirements if a 182(f) exemption is granted to an area. Michigan does not currently have—or need—an enhanced I/M program. If the State did adopt such a program (because further emissions reductions necessary to address other portions of the Act could be obtained through an enhanced program), it would have to be designed to offset NO_X increases resulting from the vehicle repairs due to hydrocarbon (HC) and carbon monoxide (CO) failures.

If, subsequent to the NO_X waiver being granted, EPA determines that the area has violated the standard, the section 182(f) exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the Federal Register. If an exemption is revoked, the State must comply with any applicable NO_X requirements set forth in the Act, such as those for NO_X RACT, NSR, I/M, and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

The Federal Register document revoking the NO_X exemption would also establish the schedule for adoption and implementation of those NO_X requirements the area was previously exempt.

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[6] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act'' November 24, 1993 (58 FR 62188).

[7] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule'' November 30, 1993 (58 FR 63214).

On November 12, 1993 the State submitted a redesignation request. Section 175(A) requires submittal of a maintenance plan for areas that are redesignating to attainment. This maintenance plan must contain contingency measures which shall be implemented if a violation of the ozone standard occurs. Consequently, if the State's redesignation request is approved, the NO_X requirements found in the maintenance plan for that area would, thereafter, apply as long as the area is designated attainment for the ozone standard.

This action will become effective on April 6, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (j) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(j) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Detroit-Ann Arbor ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity, inspection and maintenance, reasonably available control technology, and new source review. These are required by sections 176(c), 182(b)(4), and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Detroit-Ann Arbor ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 95–5444 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 102–8–6860a; FRL–5160–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected. The rules control VOC emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 6, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, DC 20460,

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.